

Ann. Stats. 1889 s. 3347a; 1891 c. 383; Stats. 1898 s. 3347a; 1915 c. 274; 1925 c. 4; Stats. 1925 s. 289.49; 1945 c. 87.

289.50 History: 1899 c. 220 s. 1; Supl. 1906 s. 3347b; 1919 c. 172; 1925 c. 4, 48; Stats. 1925 s. 289.50; 1927 c. 320; 1935 c. 483 s. 125; 1965 c. 334.

289.52 History: 1899 c. 220 s. 3; Supl. 1906 s. 3347d; 1919 c. 172; 1925 c. 4; Stats. 1925 s. 289.52.

289.54 History: 1905 c. 260 s. 1; Supl. 1906 s. 3347e; 1925 c. 4; Stats. 1925 s. 289.54; 1935 s. 483 s. 127; 1963 c. 105.

289.55 History: 1905 c. 260 s. 2; Supl. 1906 s. 3347f; 1925 c. 4; Stats. 1925 s. 289.55; 1935 c. 483 s. 127; 1963 c. 105.

289.56 History: 1905 c. 260 s. 3; Supl. 1906 s. 3347g; 1925 c. 4; Stats. 1925 s. 289.56; 1935 c. 483 s. 127; 1963 c. 105.

289.57 History: 1905 c. 260 s. 4; Supl. 1906 s. 3347h; 1925 c. 4; Stats. 1925 s. 289.57; 1935 c. 483 s. 127; 1963 c. 105; 1967 c. 276 ss. 39, 40; 1969 c. 87.

289.58 History: 1905 c. 260 s. 5; Supl. 1906 s. 3347i; 1925 c. 4; Stats. 1925 s. 289.58; 1935 c. 483 s. 127; 1963 c. 105; 1967 c. 276 s. 40; 1969 c. 87.

289.59 History: 1905 c. 260 s. 6; Supl. 1906 s. 3347j; 1915 c. 604 s. 44; 1925 c. 4; Stats. 1925 s. 289.59; 1935 c. 483 s. 127; 1963 c. 105.

289.61 History: 1905 c. 260 s. 8; Supl. 1906 s. 3347l; 1925 c. 4; Stats. 1925 s. 289.61; 1935 c. 483 s. 127; 1963 c. 105.

289.62 History: 1905 c. 260 s. 9; Supl. 1906 s. 3347m; 1925 c. 4; Stats. 1925 s. 289.62; 1935 c. 483 s. 127; 1963 c. 105.

289.63 History: 1905 c. 260 s. 10; Supl. 1906 s. 3347n; 1925 c. 4; Stats. 1925 s. 289.63; 1935 c. 483 s. 127; 1963 c. 105.

289.64 History: 1905 c. 260 s. 11; Supl. 1906 s. 3347o; 1925 c. 4; Stats. 1925 s. 289.64; 1935 c. 483 s. 127; 1963 c. 105.

289.65 History: 1905 c. 260 s. 12; Supl. 1906 s. 3347p; 1911 c. 663 s. 438; 1925 c. 4; Stats. 1925 s. 289.65; 1935 c. 483 s. 127; 1963 c. 105; 1967 c. 276 ss. 39, 40; 1969 c. 87.

289.66 History: 1905 c. 260 s. 13; Supl. 1906 s. 3347q; 1925 c. 4; Stats. 1925 s. 289.66; 1935 c. 483 s. 127; 1963 c. 105; 1967 c. 276 ss. 39, 40; 1969 c. 87.

289.70 History: 1935 c. 447; Stats. 1935 s. 289.70; 1937 c. 351; 1939 c. 159; 1943 c. 275 s. 63; 1947 c. 534; 1955 c. 553; 1957 c. 99; 1965 c. 60, 284; 1967 c. 351 s. 6.

See note to sec. 13, art. I, on taking private property for public use, citing *Hall's Point Property Owners Asso. v. Zinda*, 247 W 280, 19 NW (2d) 251.

289.70 does not limit the corporation to making an assessment against solely the lots or land owned by members of the corporation. *Hall's Point Property Owners Asso. v. Zinda*, 247 W 280, 19 NW (2d) 251.

A corporation under 289.70 cannot levy assessments for maintenance of after-acquired property against lot owners who purchased prior to the acquisition nor against lot owners who purchased later unless knowledge of the acquisition and acceptance of benefits is shown. Mere recording of the deed is not sufficient. *Hunt v. Oakwood Hills Civic Asso.* 19 W (2d) 113, 119 NW (2d) 466.

289.71 History: 1943 c. 358; Stats. 1943 s. 289.71; 1947 c. 204; 1969 c. 331.

289.80 History: 1961 c. 418; Stats. 1961 s. 289.80.

CHAPTER 290.

Liens Against Vessels.

290.01 History: R. S. 1849 c. 116 s. 1; R. S. 1858 c. 150 s. 1; 1869 c. 184 s. 1; 1872 c. 95 s. 1; R. S. 1878 s. 3348; Stats. 1898 s. 3348; 1925 c. 4; Stats. 1925 s. 290.01.

Under ch. 116, R. S. 1849, the question whether the boat proceeded against was within the statute was one of fact. *Rand v. The Barge*, 3 Pin. 363. See also *Scow Boat v. Lynn*, 1 Pin. 239.

The statute can give a lien only in case of claims arising within the state. It may be resorted to for enforcing claims accruing elsewhere where the person liable remains owner of the vessel at the time proceedings are begun against it. *McRoberts v. Steamboat Henry Clay*, 17 W 101.

Whether a steward is an agent depends on the general usage and authority of stewards in such cases. *Ernst v. Steamboat Brooklyn*, 22 W 649.

A contract to supply sails, etc., for a vessel in building is not a maritime contract, so as to fall within the admiralty jurisdiction of the federal courts. In admiralty causes arising upon the lakes state courts have concurrent jurisdiction over remedies given by state laws. *Thorsen v. Schooner J. B. Martin*, 26 W 488.

Sale of a boat or vessel by the owner, on execution against him, did not divest it of liability. *Thorsen v. Schooner J. B. Martin*, 26 W 488.

Where the owner and the parties furnishing the supplies were residents of this state and a city therein was the vessel's home port, the lien attached as soon as she entered it. *Thorsen v. Schooner J. B. Martin*, 26 W 488.

A proceeding against a vessel to enforce a contract for pilot's wages is not within the jurisdiction of state courts. *Campbell v. Sherman*, 35 W 103.

Maritime liens on domestic ships in home ports can be enforced in rem only by federal courts. *Weston v. Morse*, 40 W 455.

The remedy given by sec. 3348, Stats. 1898, is not exclusive, and a vessel may be seized upon writ of attachment in a proper case. *Phillips v. Eggert*, 133 W 318, 113 NW 686.

Sec. 3348, R. S. 1878, does not confer jurisdiction upon a court of admiralty of a proceeding in rem against a vessel for damage negligently caused to a municipal bridge. An admiralty court will take jurisdiction to enforce a lien given by local law only when the

subject is maritime. *Milwaukee v. The Curtis*, 37 F 705.

290.02 History: 1871 c. 150 s. 14; R. S. 1878 s. 3349; Stats. 1898 s. 3349; 1925 c. 4; Stats. 1925 s. 290.02.

290.03 History: R. S. 1878 s. 3350; Stats. 1898 s. 3350; 1925 c. 4; Stats. 1925 s. 290.03.

290.04 History: R. S. 1878 s. 3351; 1881 c. 76; Ann. Stats. 1889 s. 3351; Stats. 1898 s. 3351; 1925 c. 4; Stats. 1925 s. 290.04.

Editor's Note: Sec. 21, ch. 150, R. S. 1858, as amended by ch. 99, Laws 1858, and which was superseded by sec. 3351, R. S. 1878, provided that all actions arising under the provisions of that chapter, against boats and vessels navigating the inland waters of the state exclusively, "shall be summoned within three months after the cause of action shall have accrued, and not after that period." The amended section was applied in *Hay v. Steamboat "Winnebago"*, 10 W 428, and in *Emerson v. Steamboat "Shawano City"*, 10 W 433.

290.05 History: R. S. 1878 s. 3352; Stats. 1898 s. 3352; 1925 c. 4; Stats. 1925 s. 290.05.

290.06 History: R. S. 1878 s. 3353; Stats. 1898 s. 3353; 1925 c. 4; Stats. 1925 s. 290.06.

290.09 History: R. S. 1878 s. 3356; Stats. 1898 s. 3356; 1925 c. 4; Stats. 1925 s. 290.09; 1967 c. 276 s. 39; 1969 c. 87.

290.10 History: R. S. 1878 s. 3357; Stats. 1898 s. 3357; 1925 c. 4; Stats. 1925 s. 290.10.

CHAPTER 291.

Unlawful Detainer.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 291 through 1969, including the effects of chapters 87 and 284, Laws 1969. Some few provisions of ch. 291 are restated in the revised property law, effective July 1, 1971. For more detailed information concerning the effects of ch. 284, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 700.

291.01 History: R. S. 1849 c. 117 s. 12; R. S. 1858 c. 151 s. 12; 1863 c. 303 s. 1; R. S. 1878 s. 3358; 1882 c. 326; Ann. Stats. 1889 s. 3358; Stats. 1898 s. 3358; 1901 c. 26; Supl. 1906 s. 3358; 1917 c. 389; 1925 c. 4; Stats. 1925 s. 291.01; 1943 c. 113; 1959 c. 226; 1965 c. 71; 1969 c. 284.

Acceptance of rent accruing after forfeiture is a waiver of the breach of a condition of the lease that the tenant would not cut timber on the premises, rent having been received with knowledge of the breach. *Gomber v. Hackett*, 6 W 323.

An assignee or grantee of the lessor may maintain the action. *Savage v. Carney*, 8 W 162.

The tenant cannot set up a tax title acquired by a third party since the commencement of his term. The tax deed does not operate as an assignment of the lease to the grantee therein or affect the possession of the prem-

ises conveyed by it. *Chase v. Dearborn*, 21 W 57.

A receiver should apply to the court for authority to prosecute the action. *King v. Cutts*, 24 W 627.

The remedy given extends only to cases where the tenant, at time of demand made in writing that he deliver possession, is holding over after termination of the lease, or contrary to its covenants, or after rent has become due and remained unpaid for 3 days. *Ela v. Bankes*, 32 W 635; *Carter v. Van Dorn*, 36 W 289.

The guardian cannot maintain an action for unlawful detainer in his own name against a tenant holding over contrary to terms of a lease executed prior to the guardianship. Such action should be in the name of the ward. *Vincent v. Starks*, 45 W 458.

To create tenancy so as to bar the landlord's action under this statute there must be evidence that the tenant held over with assent of the landlord and that the latter admitted continuance of the relation of landlord and tenant. *Meno v. Hoeffel*, 46 W 282, 1 NW 31.

A tenant cannot deny the title of his landlord or that he holds possession under him. *Strain v. Gardner*, 61 W 174, 21 NW 35.

In proceedings under ch. 145, R. S. 1878, the question of title to land does not arise and cannot be raised by the pleadings. *Newton v. Leary*, 64 W 190, 25 NW 39.

See note to sec. 16, art. I, citing *Toal v. Clapp*, 64 W 223, 24 NW 876.

The statute does not extend to a defendant who is a mortgagor, having a right of redemption in the premises. *Hunter v. Maanum*, 78 W 656, 48 NW 51.

A complaint in prescribed form confers jurisdiction of the subject matter, the summons being merely the means of acquiring personal jurisdiction. An objection that the summons is not in proper form is waived by a general appearance. A notice demanding possession for refusal to pay rent and that plaintiff will proceed unless the rent is paid or possession delivered is sufficient. *Brauchle v. Nothhelfer*, 107 W 457, 83 NW 653.

Tenancy at will or by sufferance created by implication of law must be terminated by ejectment rather than by proceedings under sec. 3358, Stats. 1898. *Maxham v. Stewart*, 133 W 525, 113 NW 972.

Where defendant has other rights than those of a lessee, an action for unlawful detainer cannot be maintained. *Nightingale v. Barends*, 47 W 389, 2 NW 767; *Diggle v. Boulden*, 48 W 477, 4 NW 678; *Lathrop v. Millar*, 146 W 82, 130 NW 959.

An action for unlawful detainer is inadequate and an equitable remedy is more appropriate when the relations of the parties, although in form that of landlord and tenant, is such that they constitute a quasi-partnership and the relief sought is a cancellation of the lease as well as surrender of the premises and an accounting of sales by the tenant in order to determine the rental due the landlord. *Milwaukee B. Store v. Katz*, 153 W 492, 140 NW 1038.

Where a controversy over the question whether a tenancy was from month to month or for a full year was settled by agreement